Circuit Court for Baltimore County
Case No. 03-K-17-002147

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 407

September Term, 2018

ERROLL D. DAVENPORT

v.

STATE OF MARYLAND

Graeff,
Reed,
Salmon, James P.
(Senior Judge, Specially Assigned),
JJ.

Opinion by Graeff, J.

Filed: August 7, 2019

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

On September 11, 2017, a jury sitting in the Circuit Court for Baltimore County convicted appellant, Erroll D. Davenport, of two counts of attempted first-degree murder, use of a firearm during the commission of a crime of violence, possession of a handgun–carrying concealed or openly, and illegal possession of a firearm. On appeal, appellant raises the following questions for this Court's review, which we have rephrased slightly, as follows:

> 1. Did the trial court err in restricting cross-examination of a key State's witness' racial bias, as well as declining to admit extrinsic evidence of his racial bias?
>
> 2. Was there sufficient evidence of appellant's agency to support his convictions?

For the reasons set forth below, we shall affirm the judgments of the circuit court.

FACTUAL AND PROCEDURAL BACKGROUND

I.

Crime and Investigation

On April 9, 2017, Officer Carlos Moorer, a member of the Baltimore County Police Department, responded to a call regarding a shooting at the Gateway Tavern (the "Gateway") located on Annapolis Road. When he arrived at approximately 2:30 a.m., he saw a man, later identified as Joseph Dudley, lying against a vehicle in the parking lot and bleeding from his chest area. He also observed a second man, Jeremy Miller, who was suffering from a gunshot wound to the hand.

The two men advised that they had been shot by an unknown male suspect. An officer on the scene called a medic, and the victims were transported to the hospital, where they received treatment for their injuries.

After speaking with the Gateway owner, Officer Moorer was able to obtain surveillance footage of the premises. Officer Christopher Sterling, who also was present at the crime scene, reviewed the video footage. He observed an African American male wearing dark clothing approach two white men who appeared to be changing a flat tire. At approximately 2:26 a.m., the man began shooting and then fled the scene, heading southbound on Annapolis Road. The suspect then entered a vehicle and continued driving southbound.

Officer Sterling traced the path that he saw the suspect take to search for potential discarded evidence. At approximately 3:00 a.m., he headed back to the Gateway and observed an African American man and a white woman standing behind a chain link fence across the street from the Gateway. The man was wearing jeans, white tennis shoes with black or blue coloring around the toes, and a black coat.

Officer Sterling approached, and the man, later identified as appellant, said that he had come to the Gateway to get liquor. Officer Sterling thought this was suspicious because it was common knowledge that all bars were closed by 3:00 a.m. In response to Officer Sterling's question, appellant said that he lived at 4015 McDowell Lane. Appellant advised that he had walked from that address to the Gateway, and he owned two vehicles, a silver Nissan 350Z and a gold Honda Odyssey van.

After speaking with appellant, Officer Sterling reviewed the Gateway footage again. He determined that the clothing worn by the suspect in the video was similar to that worn by appellant.[1] Appellant was arrested, and Officer Moorer transported him to Baltimore City Police Headquarters.

At approximately 4:00 a.m., Officer Sterling drove to the address appellant provided, 4015 McDowell Lane, which was a one or two minute drive from the Gateway. He saw the silver Nissan parked outside the residence, but he did not see a Honda van.

Officer Sterling inspected the Nissan. The driver's side window was completely down, and the passenger's window was partially open. The hood of the vehicle was warm to the touch, and no morning dew had accumulated on the vehicle.[2] After running a search of the license plate number, Officer Sterling was able to confirm that the vehicle belonged to appellant.

Before Officer Moorer transported appellant to the Baltimore County Police Headquarters, Officers Lasane and White placed a paper bag over each of appellant's hands to preserve possible gunpowder residue. When Meredith Duley, a Forensic Service Technician with the Baltimore County Police Department, arrived at the Gateway, she removed the bags from appellant's hands and performed a Gunshot Residue ("GSR") test,

[1] Officer Sterling testified that some of the clothing that the suspect in the surveillance footage wore, i.e., the coat and the hat, looked different from the clothes that appellant was wearing.

[2] Officer Sterling testified that, in his experience, "morning dew can accumulate at any time during the night time." He noted, however, that he was not an expert with regard to that type of evidence.

utilizing a Gunshot Residue Collection Kit. This involved swabbing each of appellant's hands and placing the swabs, which included a control sample, into three separate containers. She then placed the containers in an envelope and sealed it with evidence tape. The envelope was sent to RJ Lee Group, a private forensic laboratory, for testing.

At police headquarters, Detectives Ronald Long and Danielle Barber interviewed appellant. At the time, appellant was wearing a black and grey coat with a dark colored cap on his head, as well as black and white Jordan shoes.

After reading appellant his *Miranda* rights and obtaining a signed waiver of those rights,[3] Detective Long began questioning appellant about the incident. Appellant stated that, on April 8, he began drinking at approximately 7:00 p.m., and he went to the Gateway to "get some beers and some liquor."[4] He then left the Gateway to get a carwash on West Patapsco and pick up Brenda, his on-again-off-again girlfriend, in Canton. He drove Brenda to the Gateway, where the two drank and ate buffalo wings.

As they were leaving the Gateway, Brenda and appellant saw a man who said that he was changing his tire. When the man asked appellant for a cigarette, appellant responded that he did not have one. Although appellant did not remember what he said to the man, he remembered that the conversation was not contentious.

[3] *Miranda v. Arizona*, 384 U.S. 436 (1966).

[4] When asked by Detective Long how much he drank, appellant responded: "Oh man. . . . when I drink, I be drinking." He later stated that he had been drinking Bacardi rum.

Appellant and Brenda left the Gateway in appellant's Nissan 350Z, a grey sports car, and went to his apartment on McDowell Lane. Appellant and Brenda left the apartment approximately 30 minutes later and walked toward the Gateway to "see if [they] [could] get something else from down there."

During the interview with Detective Long, appellant stated that he did not recall speaking to the men he had confronted earlier in the parking lot of the Gateway, and he did not have a gun that night. He stated that he did not keep any firearms in his house or in his car.[5]

Following the interview, police executed search warrants of appellant's car and apartment. In the apartment, they recovered a blue baseball cap and black sunglasses on appellant's bed. Additionally, they retrieved a box of .32 caliber ammunition from a security box in the back of another room, where appellant's cousin was staying.

II.

Trial

Trial began on January 3, 2018. Officer Moorer testified first. During his testimony, the State introduced footage from his bodycam, which captured, among other things, appellant's arrest. Officer Moorer made an in-court identification of appellant as the person who was arrested.

[5] Appellant admitted that he had fired a gun in the past, and he shot rifles, sometimes firing into the woods.

Mr. Miller testified that, on the night of the shooting, he and his friend, Mr. Dudley, had been drinking at the Highland Inn bar. While there, Mr. Miller consumed approximately 14 beers and Mr. Dudley had a "couple drinks." After leaving the bar, they were driving in Mr. Dudley's car, and the car developed a flat tire. Although the Gateway was closed, they decided it was safer to stop in the Gateway parking lot rather than stop on the side of the road.

Mr. Dudley retrieved the tire jack and tools from the car, and Mr. Miller began to jack up the vehicle. At that point, a man and his female companion walked up to Mr. Dudley and Mr. Miller. Mr. Miller had seen the woman before, but he did not know her name. He had never seen the man.

The man began saying "some really bad things" to Mr. Miller and Mr. Dudley, and at some point, Mr. Dudley pointed his middle finger at the man.[6] The three got into a heated argument, which was subsequently broken up by James, a friend of Mr. Miller's, who had been standing outside the Gateway. No physical fight broke out during the exchange.

The man entered his car and drove away with the woman who had accompanied him out of the bar. Mr. Miller went back to work on the tire. Mr. Miller testified that, several minutes later, the same man returned to the Gateway parking lot and told him and

[6] Mr. Miller could not remember exactly what the man said to him and Mr. Dudley. He testified, however, that he remembered that the man made some remarks to him about him being white. Mr. Miller did not see Mr. Dudley raise his middle finger to the man, but he saw that on the surveillance footage.

Mr. Dudley that he was going to blow their "rooftops off or something," which Mr. Miller later learned meant he was going to shoot them in the head. When Mr. Miller and Mr. Dudley saw that the man had drawn a gun from his right pocket, they lunged forward to disarm him. The man shot Mr. Dudley in the chest. Mr. Miller "dropped down" near the passenger side of the car, placed his hands in front of his face, and was shot in the hand. He then played dead. As Mr. Dudley was running around the vehicle to avoid the suspect, Mr. Miller heard another gunshot. After the shooting, staff from the Gateway came out and called the police.

During Mr. Miller's testimony, the State played a portion of the surveillance footage that captured the shooting in the parking lot.[7] The video showed that Mr. Miller and Mr. Dudley arrived at the parking lot at approximately 2:08 a.m., and approximately one minute later, a man wearing a blue baseball cap, jeans, a grey and black coat, and black and white shoes, exited the Gateway.[8] The victims and the suspect appeared to get in an argument. At approximately 2:12 a.m., while the three men were arguing, James approached the three individuals. Shortly thereafter, the suspect and the woman drove away in a silver vehicle.

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[7] The surveillance footage recovered from the cameras at the Gateway was admitted into evidence.

[8] Footage from inside the Gateway, which was also admitted at trial, showed that the suspect and a woman wearing a light-colored shirt exit the bar at around 2:08 a.m.

The video showed that approximately 12 minutes later, at 2:24 a.m., a man approached Mr. Miller and Mr. Dudley. Mr. Miller testified that this was the same man who had approached them minutes earlier. After the three briefly conversed, Mr. Miller and Mr. Dudley began to run, after which one of the victims fell to the ground beside the Ford Taurus. The other victim began running around the vehicle while the man pursued him. The shooter then fled the scene.

Mr. Miller testified that, although he heard two shots fired in his direction, he did not get a clear look at the gun or bullet casings. After the shooting, Mr. Dudley knocked on the tavern and got the attention of Ms. Oday, the bartender at the Gateway. Mr. Miller called the police on his cellphone, and he believed that Ms. Oday called the police as well.[9] The ambulance, along with the police, arrived shortly thereafter, and Mr. Miller and Mr. Dudley were transported to the hospital.

Mr. Dudley similarly testified that, on the night of the shooting, he and Mr. Miller got into an argument with a man who approached them in the Gateway parking lot. Like Mr. Miller, he had not seen the man before, and he could not remember the substance of the argument with the man. Following the argument, the man and his female companion got into the car and departed the area. Minutes later, the same man returned to the parking lot, approached him and Mr. Miller, and began shooting. Mr. Dudley testified that the

[9] As discussed in more detail *infra*, in his call to 911, Mr. Miller referred to the suspect as a "n****r." He testified that, at the time, he was "mad" and "in shock," which resulted in "words coming out that [he did not] mean to say."

man, who looked to be approximately 38 years of age, fired several shots, striking him once in the collar bone.[10]

Ms. Oday, a bartender at the Gateway, recalled seeing Mr. Miller at approximately 6:00 p.m. on April 8, 2017, for happy hour. She also observed Brenda, a regular at the bar, that night and the early morning of April 9. Brenda was in the company of a male companion who Ms. Oday understood to be her boyfriend. Ms. Oday had never seen the man prior to that night. She testified that the two ate and drank at the Gateway for approximately an hour before leaving.

At approximately 1:45 a.m. on April 9, 2017, she heard someone banging at the door. She asked Larry, the cleaning man at the Gateway, to open the door. When Mr. Miller entered, he asked her to call 911, which she did.

No firearm, shell casings, or bullets were recovered from the scene.[11] The forensic evidence was limited to the GSR test that was conducted shortly after appellant was arrested.

Tarah Helsel, a forensic scientist and gunshot residue expert, testified that the gunshot residue collection sample taken from appellant's left hand tested positive for

[10] During cross-examination, Mr. Dudley admitted to three prior convictions for theft of more than $500.

[11] Mr. Dudley testified that one of the bullets remains lodged in his chest. His treating physicians told him that removing the bullet would cause more damage.

gunpowder residue. Accordingly, she concluded that there was a "population of gunshot residue on [appellant's] left hand."[12]

As indicated, the jury convicted appellant of two counts of attempted murder, use of a firearm during the commission of a crime of violence, possession of a handgun-carrying concealed or openly, and illegal possession of a firearm. This appeal followed.

DISCUSSION

I.

Appellant contends that the circuit court "should have permitted cross-examination and extrinsic evidence regarding [Mr.] Miller's racial biases." Specifically, he contends that the court erred in: (1) preventing appellant's counsel "from cross-examining [Mr.] Miller about his use of the N-word at the police station"; and (2) precluding "the defense from introducing extrinsic evidence of [Mr. Miller's] prejudice—specifically, (a) footage of that same incident at the police station and (b) testimony from [Ms.] Oday concerning Mr. Miller's use of the N-word to her." He asserts that this evidence was admissible pursuant to Maryland Rule 5-616, the Confrontation Clause of the United States Constitution, and Article 21 of the Maryland Declaration of Rights.

The State disagrees. It contends, initially, that appellant did not argue below that the evidence was admissible under Rule 5-616, the Confrontation Clause, or Article 21, and therefore, these arguments are not preserved for this Court's review. In any event, it

[12] During cross-examination, Ms. Helsel testified that, theoretically, the gunshot residue could have stayed on appellant's hands for days if appellant did not touch or wash his hands during that time.

contends that appellant's argument is without merit. The State asserts that evidence regarding Mr. Miller's racial prejudice had no probative value because Mr. Miller did not identify appellant as the shooter, and "[e]ven if the evidence had some probative value, the trial court did not abuse its discretion in declining to admit cumulative evidence of [Mr.] Miller's racist remarks."

A.

Proceedings Below

Appellant's contention arises from two instances where he attempted to introduce evidence of Mr. Miller's racial bias. We will set forth in detail the discussion for each.

1.

Cross-Examination

The first instance occurred during defense counsel's cross-examination of Mr. Miller on January 4, 2018, while counsel was questioning Mr. Miller about statements he made during his interview with the police on April 9, 2017:

> [Defense counsel]: Okay. Now, do you recall telling the police [during the interview], when they ask you if you remember seeing the shooter's face, do you remember your answer to that question?
>
> [Mr. Miller]: I do, briefly, and I was saying it all because it was late. I was joking.
>
> [Defense counsel]: Oh, okay. So when you joked—and you're saying you jokingly responded "They all look the same to me," right?
>
> [Mr. Miller]: Yes.
>
> [Defense counsel]: And when we say "they all," we're talking about, I guess, black people, right?

[Mr. Miller]: Yes.

[Defense counsel]: Okay. All right. And you're saying that you wanted to be—that that was just a joke to you. Okay. All right so then—

Defense counsel then asked Mr. Miller about racially charged remarks that he made to the police dispatcher after he had been shot:

[Defense counsel]: Okay. All right. So, you recall when being asked for a description of [the suspect] that your response to the [police] dispatcher was. "I don't know, he's a n****r."

* * *

[Mr. Miller]: I don't think I said that.

[Defense counsel]: You don't think you said that. Okay.

[Mr. Miller]: I have friends that are colored. Mike's—

* * *

[Defense counsel]: And then when I played the part [of the police dispatch recording] where you called—referred—described the assailant as a n****r, then you said "Was that me?" And it was the same voice?

[Mr. Miller]: Yes.

[Defense counsel]: But let me ask you this, that was you right?

[Mr. Miller]: Yes.

[Defense counsel]: Okay. Good. All right. Well that's good?

[Mr. Miller]: I was in shock. I was mad. I mean, words coming out that you don't mean to say.

[Defense counsel]: All right.

[Mr. Miller]: If you seen the other video, I'm there talking to a man named James, who's a friend of mine, so I'm not a racist.

[Defense counsel]: Very good. So what you're saying is when you calm down, then you're able—then it's like "Oh my God, I can't believe I said that earlier," right? Right?

[Mr. Miller]: I guess.

Defense counsel then asked Mr. Miller whether he had calmed down in the interim period between the dispatch call and his interview with police:

[Defense counsel]: . . . Now just to be clear, you're saying . . . you were obviously . . . less stressed by the time you have been treated and now you're at the police station right?

[Mr. Miller]: Not really.

[Defense counsel]: Okay.

[Mr. Miller]: No.

[Defense counsel]: Okay. So when you're saying you were just joking around before at the police station and you said "They all look the same to me," and you said that was just a joke, that's an example of not being relaxed?

I'm asking you, you said you were joking around at the police station. You told this jury that you said "They all look the same," at the police station?

[Mr. Miller]: Yes. I was joking around about it.

[Defense counsel]: Joking around. Right. Exactly.

[Mr. Miller]: Still stressed.

[Defense counsel]: So not nearly as stressed, right—

[Mr. Miller]: Still stressed.

At this point, the prosecutor requested a bench conference. She argued that testimony regarding Mr. Miller's use of "foul, offensive language" was not relevant and served only to "get the jurors riled up[.]"

Defense counsel then proffered that he intended to ask appellant about another racist statement he made. Although defense counsel did not specify, on the record, which statement he wanted to publish to the jury, the parties on appeal agree that it involved Mr. Miller's complaint about the police seizing his cell phone, where appellant stated "there was no reason to take my phone because it had nothing to do [with] this n****r that shot me."

The following then occurred:

> COURT: What's the relevance?
>
> [Defense Counsel]: Well, I get to impeach this witness, first of all, to show prejudice, okay, as per the rules, as well as—
>
> COURT: I don't remember the State even having him identify [appellant] as the assailant.
>
> [Defense Counsel]: He—oh, no. [Mr. Miller] said that the person from the second video was the same one as from the first video.
>
> THE COURT: Right. But he never identified the first person as [appellant].
>
> [Prosecutor]: That's correct, Your Honor.
>
> [Defense Counsel]: Well, does it matter?
>
> THE COURT: Yeah. You said you want to impeach him, show prejudice. Prejudice about what?
>
> [Defense Counsel]: Well, the other thing is now—

> THE COURT: The video shows that [Mr. Miller] got shot. That's pretty much what he described. Okay. What you're showing me here seems to me to [be] a collateral matter, something about his phone.
>
> [Defense Counsel]: Right (inaudible).
>
> THE COURT: He's telling—what you're showing me is [Mr. Miller] says, the police say "You'll get your phone back." [Mr. Miller] says "Yeah, but it's no reason to take my phone because this had nothing to do with the," and he uses the N word, "that shot me." And it doesn't have anything to do with who shot him, so it's a collateral matter which does not come into evidence under 5-613.
>
> [Defense Counsel]: I think I'm--I have to get my book.
>
> [THE COURT]: That's my ruling. I think that is just to inflame the jury. I don't think that has anything to do with him identifying the person who shot him, especially since he didn't identify the person who shot him anyway. What else? Is there anything else?

The court clarified that, if appellant had identified the person who shot him, "prejudice would be more of an issue." Defense counsel said: "Okay." He did not make any other argument regarding why the proffered testimony was admissible.

2.

Extrinsic Evidence

The second category of evidence, involving extrinsic evidence of prejudice, was discussed later in the trial. During defense counsel's cross-examination of Ms. Oday, he asked about her conversation with Mr. Miller after the shooting. The State objected, and defense counsel stated that he wanted to elicit testimony that Mr. Miller "told [her] that somebody with an N word did it." The State argued that this statement was prejudicial, it was "meant to inflame the jury, and it's hearsay."

Defense counsel argued that the statement was relevant because Mr. Miller "acted like that single use of the word was just ignorant of him, but it's not the single use of the word." The circuit court sustained the State's objection, stating:

> The use of that word is other than him identifying the black person, would be irrelevant to the substantive issue. It would only be used to, I think, show some bias by [Mr.] Miller or inflame the jury.
>
> So, number one, it's hearsay. Number two, I do think it is only being elicited to show some sort of bias, or to inflame the jury. [Mr.] Miller did not identify [appellant] as the person who shot him. I think—he may have identified him as the person who came out the first time. We'll get into that later, but the objection is sustained.

B.

Analysis

We begin by addressing the State's contention that appellant's evidentiary objections were not preserved for this Court's review. "Ordinarily, the appellate court will not decide any . . . issue unless it plainly appears by the record to have been raised in or decided by the trial court." Maryland Rule 8-131(a); *McDonnell v. Harford Cty. Housing Agency*, 462 Md. 586, 602 (2019). In order to preserve an objection for appellate review, including a claim that cross-examination was improperly restricted, the proponent of the evidence, when challenged, must proffer "the relevance of, and factual foundation for, a line of questioning." *Peterson v. State*, 444 Md. 105, 125 (2015). *See* Maryland Rule 5-103(a).

Here, defense counsel never cited Rule 5-616, and his argument regarding the relevance of additional evidence of the witness's racial bias was not a model of clarity.

Counsel said enough, however, to persuade us to exercise our discretion to consider whether the evidence was admissible under the Maryland Rules. With respect to the Confrontation Clause and Article 21, however, counsel said nothing to alert the court to those issues, and therefore, we will not consider them. *See Williams v. State*, 131 Md. App. 1, 22–24 (failure to argue Confrontation Clause claim below constituted a waiver of that issue on appeal), *cert. denied*, 359 Md. 335 (2000).[13]

Turning to the merits, appellant contends that the evidence of Mr. Miller's racial bias was admissible under Rule 5-616. Rule 5-616 provides:

> (a) **Impeachment by inquiry of the witness.** The credibility of a witness may be attacked through questions asked of the witness, including questions that are directed at:
>
> * * *
>
> (4) Proving that the witness is biased, prejudiced, interested in the outcome of the proceeding, or has a motive to testify falsely;
>
> * * *
>
> (b) **Extrinsic impeaching evidence.** . . .
>
> * * *
>
> (3) Extrinsic evidence of bias, prejudice, interest, or other motive to testify falsely may be admitted whether or not the witness has been examined about the impeaching fact and has failed to admit it.

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[13]Appellant requests that we review this contention for plain error. As this Court has explained, however, plain error review is a '"rare, rare phenomenon,' undertaken only when the unobjected-to error is extraordinary.'" *Carroll v. State*, 240 Md. App. 629, 662 (2019) (quoting *Perry v. State*, 229 Md. App. 687, 710 (2016)). We are not persuaded that this case qualifies as one for which such review is appropriate.

The Court of Appeals has explained that questions intended to probe a witness's bias under Rule 5-616 should be prohibited when: "'(1) there is no factual foundation for such an inquiry in the presence of the jury, or (2) the probative value of such an inquiry is substantially outweighed by the danger of undue prejudice or confusion.'" *Calloway v. State*, 414 Md. 616, 638 (2010) (quoting *Leeks v. State*, 110 Md. App. 543, 557–58 (1996)). *Accord Martinez v.* State, 416 Md. 418, 430 (2010).

Appellant contends that the court erred in its analysis because it focused solely on Rule 5-613, to the exclusion of Rule 5-616.[14] As the State notes, however, the court did not limit its ruling to Rule 5-613; it considered whether the proffered cross-examination and extrinsic evidence was relevant to Mr. Miller's credibility. The court determined that

[14] Rule 5-613 provides as follows:

> (a) **Examining witness concerning prior statement.** A party examining a witness about a prior written or oral statement made by the witness need not show it to the witness or disclose its contents at that time, provided that before the end of the examination (1) the statement, if written, is disclosed to the witness and the parties, or if the statement is oral, the contents of the statement and the circumstances under which it was made, including the persons to whom it was made, are disclosed to the witness and (2) the witness is given an opportunity to explain or deny it.
>
> (b) **Extrinsic evidence of prior inconsistent statement of witness.** Unless the interests of justice otherwise require, extrinsic evidence of a prior inconsistent statement by a witness is not admissible under this Rule (1) until the requirements of section (a) have been met and the witness has failed to admitting having made the statement and (2) unless the statement concerns a non-collateral matter.

it was not relevant because Mr. Miller did not identify appellant, noting that if he had identified appellant, then it would need to consider prejudice.

After reviewing the record here, we conclude that circuit court did not err or abuse its discretion in declining to allow defense counsel to elicit more evidence, beyond that already elicited, of Mr. Miller's racial bias. In that regard, we note that defense counsel was able to elicit evidence demonstrating Mr. Miller's racial bias, including: (1) the 911 recording, which was played to the jury and in which Mr. Miller referred to the shooter as a n****r; and (2) Mr. Miller's admission during his testimony that, during his interview with police, he stated that African American people "all look the same to [him]." And, defense counsel raised the issue of Mr. Miller's use of the "N-word" on multiple occasions during his cross-examination of Mr. Miller. As the circuit court told defense counsel at the close of evidence: "I think you've got in evidence that [Mr.] Miller used the N word, loud and clear."

It is against that record that we must address the court's rulings that are the subject of this appeal. "The scope of cross-examination lies within the sound discretion of the trial court." *Pantazes v. State*, 376 Md. 661, 680 (2003). The court exercises this discretion "by balancing 'the probative value of an inquiry against the unfair prejudice that might inure to the witness. Otherwise, the inquiry can reduce itself to a discussion of collateral matters which will obscure the issue and lead to the fact finder's confusion.'" *Id.* (quoting *State v. Cox*, 298 Md. 173, 178 (1983)).

Here, as the State notes, the additional racist statements that defense counsel wished to adduce had limited probative value regarding any motive by Mr. Miller to fabricate his testimony:

> [Mr.] Miller testified about the events of the night (as far as he could recall them). His testimony about what happened added little, if anything, to what could be seen on the Gateway Tavern surveillance video. As the trial court also noted, [Mr.] Miller did not identify [appellant] as the person in [the] first incident, he did not identify [appellant] as the shooter in the second incident, he did not make a pretrial identification of [appellant], he did not identify [appellant] from the surveillance video, and he did not identify [appellant] at trial. Accordingly, [Mr. Miller's] racial prejudice did not affect his identification of [appellant] because there *was* no identification.

(Emphasis in original.)

Moreover, contrary to appellant's claim, the evidence and testimony excluded did not bear on Mr. Miller's truthfulness. Appellant argues that the exclusion of the evidence and testimony was error because additional instances in which Mr. Miller made racist remarks, including the "N-word," cast doubt on Mr. Miller's testimony that he used this offensive term during the 911 call because he was "in shock," and therefore, he said words "that [he] didn't mean to say." We agree with the State, however, that Mr. Miller never testified that he only used the "N-word" once. Additionally, as the State notes, "the jury was not misled into believing that [Mr.] Miller's use of the N-word was a 'one time aberration'" from a person without racial bias because defense counsel "had already elicited evidence that [Mr.] Miller said '[t]hey all look alike.'"

Finally, in addition to concluding that the evidence had little probative value, the circuit court determined that the questioning was intended merely to "inflame the jury."

This observation was confirmed by defense counsel's cross-examination of Mr. Miller and his closing argument, where counsel made clear that he wanted to elicit additional evidence of Mr. Miller's racist remarks to impugn his character, not to show that his prejudice affected the credibility of his testimony. Under these circumstances, there was no abuse of discretion by the circuit court in concluding that any probative value of the statements was substantially outweighed by undue prejudice.

II.

Appellant next contends that the evidence was insufficient to support his convictions. Specifically, he asserts that "[n]either victim sufficiently identified [him] as his assailant," and the remaining evidence was inadequate to prove his guilt.

The State disagrees. It asserts that the "circumstantial identification of [appellant], in conjunction with all other evidence, supported the jury's conclusion that [appellant] was the shooter."

This Court recently set forth the standard of review for a sufficiency of the evidence claim, as follows:

> We review a challenge to the sufficiency of the evidence to determine "'whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.'" *Grimm v. State*, 447 Md. 482, 494–95, 135 A.3d 844 (2016) (quoting *Cox v. State*, 421 Md. 630, 656–57, 28 A.3d 687 (2011)); *accord Jackson v. Virginia*, 443 U.S. 307, 319, 99 S.Ct. 2781, 61 L.Ed.2d 560 (1979). "Because the fact-finder possesses the unique opportunity to view the evidence and to observe first-hand the demeanor and to assess the credibility of witnesses during their live testimony, we do not re-weigh the credibility of witnesses or attempt to resolve any conflicts in the evidence." *Tracy v. State*, 423 Md. 1, 12, 31 A.3d 160 (2011) (citation omitted).

> "[T]he question is not whether the [trier of fact] could have made other inferences from the evidence or even refused to draw an inference, but whether the inference [it] did make was supported by the evidence." *State v. Suddith*, 379 Md. 425, 437, 842 A.2d 716 (2004) (citation and internal quotation marks omitted). We, therefore, "defer to any reasonable inferences a jury could have drawn in reaching its verdict, and determine whether there is sufficient evidence to support those inferences." *Lindsey v. State*, 235 Md. App. 299, 311, 176 A.3d 741, *cert. denied*, 458 Md. 593, 183 A.3d 162 (2018).

Redkovsky v. State, 240 Md. App. 252, 262–63 (2019).

As indicated, appellant's sole challenge to his convictions is that the State failed to prove beyond a reasonable doubt that he was the shooter. We agree with the State, however, that, based on the circumstantial evidence, a rational jury could have found beyond a reasonable doubt that appellant was the shooter. *See Snyder v. State*, 104 Md. App. 533, 549, 551 (criminal agency may be proved through circumstantial evidence), *cert. denied*, 340 Md. 216 (1995). Mr. Miller and Mr. Dudley, although unable to specifically identify appellant as the shooter, testified that the man who first approached them in the Gateway parking lot was the same person who shot them minutes later. This is corroborated by the surveillance footage, which shows that the man who approached Mr. Miller and Mr. Dudley at 2:09 a.m. wore clothing similar to that worn by the shooter, who approached at approximately 2:24 a.m., including: jeans, a light-colored shirt, a dark colored jacket, and black and white shoes.[15] And appellant admitted to the police that he

[15] Appellant argues that the surveillance footage "could not establish criminal agency," because the "pixilation meant a viewer could not identify the persons depicted." Although the pixilation obscures the face of the shooter, the basic features of the shooter's clothing are discernable.

was the man involved in the first incident with the victims. This evidence circumstantially identified appellant as the shooter.

Moreover, Officer Moorer's bodycam footage showed that, shortly after the shooting, appellant was standing near the Gateway, with a suspicious explanation, and he was wearing jeans, a light-colored shirt, a dark colored jacket, and white shoes with black on the toes, clothing that was similar in appearance to the clothes worn by the suspect in the surveillance footage. The GSR test conducted shortly after appellant's arrest showed the presence of gunpowder residue on appellant's left hand. And, less than two hours after the shooting, the police discovered appellant's silver Nissan 350Z at his home, which was in the direction that the shooter fled, and the hood on the Nissan was still warm to the touch. Viewing the evidence in the light most favorable to the State, as we must, we conclude that the evidence was sufficient for the jury to find beyond a reasonable doubt that appellant was the shooter.

JUDGMENTS OF THE CIRCUIT COURT FOR BALTIMORE COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.